IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 11TH DECEMBER 2007 / 20TH AGRAHAYANA 1929

MFA.No. 410 of 2003

OPMV.456/1995 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, KALPETTA
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APPELLANT: PETITIONER

ELSTIN MARY S. D/O. LATE SCARIA,
MINOR AGED 14 YEARS, RESIDING AT PUTHUSSERIYIL HOUSE, P.O.VELIYAMBAM, PULPALLY, SULTHAN BATHERY TALUK, WAYANAD DISTRICT REPRESENTED BY GUARDIAN, AUNT ALEYAMMA VARGHESE, AGED 52, R/AT CHULLOTHI-KUZHIYIL HOUSE,ANAPPARA,PULPALLY,WAYANAD DISTRICT.

BY ADV. SRI.N.J.ANTONY

RESPONDENTS: RESPONDENTS
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1. KODIYATTIL PETER K.MATHEW,S/O. MATHEW
AGED 30 YEARS, RESIDING AT KODIYATTIL HOUSE, NEDUMPURACHAL, POST NEDUMPOYIL, CHITARIPARAMBA, PERAVOOR, KANNUR DISTRICT.
(DRIVER-CUM-OWNER OF JEEP NO.KL-12A/5344 D.L.NO.NOT KNOWN)

2. UNITED INDIA INSURANCE CO.LTD., BRANCH OFFICE, BROTHERS COMPLEX, THALASSERY ROAD, KUNNUR 670 002.
(POLICY NO.100805/512/31/01/077493. VALIDITY FROM 27-9-1994 TO 16-9-1995)

BY ADVS. SRI.LALJI P.THOMAS --- R1
SRI.JOHN KOSHY --- R2

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 11/12/2007 ALONG WITH MFA NOS. 411/2003 AND 412/2003 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA, JJ.

M.F.A.Nos.410, 411 and
412 of 2003

Dated 11th December, 2007

JUDGMENT

Koshy,J.

These appeals are filed by an unfortunate girl who lost her father, mother and brother in a motor accident. She was aged 8 at the time of the accident. It is submitted that applications for compensation for the death of father, mother and brother were filed through her paternal grandmother as the guardian. She also died and now there is no relatives. Her properties are thereafter managed by the court and she is now studying for nursing at Bangalore. Her father and mother were High School Teachers and getting salary from the Government. Father was working in the Government High School, Irulath, Wayanad and mother was working in Jayasree Higher Secondary School, Pulpally, Wayanad which is an aided school. Tribunal has awarded a total compensation of Rs.2,60,000/= for the death of father, another Rs.2,60,000/= for the death of mother and only Rs.26,000/= for the death of her brother aged 4 years at the time of accident. The Tribunal found that the accident occurred due to the negligence of the driver-cum-owner of the offending vehicle which was insured by the second respondent insurance company. Major contention is regarding the

quantum of compensation.

2. Appellant's father's salary certificate was produced as Ext.A5 issued by the Headmistress, Government High School which shows that his last drawn salary was Rs.3,413/= out of which Rs.1,440/= was Basic pay and Rs.1,843 was DA. The balance was allowances like HRA and HTA. Mother was also getting fixed salary. It is contended that there is prospects in employment as they were receiving Government salary. Apart from the future prospects, there were regular promotions, grade promotions as well as wage revisions. The accident occurred in 1995. In 1997 and 2004 there were wage revisions and if they were continuing in service they would have received more than three times the salary they were receiving at the time of death and then retiral benefits like gratuity, pension etc. will be calculated on the basis of the last drawn salary. This unfortunate accident has lost everything. Tribunal has taken Rs.3,000/= as the monthly income and fixed loss of dependency due to the death of father at Rs.2,000/=. We are of the view that at least Rs.3,300/= ought to have been fixed as monthly income and after deducting one third, Rs.2,200/= ought to have been taken as the loss of dependency. Tribunal has taken only 10 as the multiplier. A three member bench of the Supreme Court in **Smt.Supe Dei and others** v. **M/s.National Insurance Company Ltd. and another** (JT 2002 (Suppl.1) SC 451)

and recently in **APSRTC** v. **M.Pentaiah Chary** (2007AIR SCW 5689) held that guidelines from the second schedule should be taken for fixing multiplier. Father was aged only 34. Taking guidance from the second schedule 17 is the multiplier, but, the girl was aged only 8. For a child aged below 15 the multiplier fixed under the second schedule is 15. We take 15 as the multiplier. If that be so, dependency compensation payable will be Rs.3,96,000/= (Rs.2,200 x 12 x 15). Tribunal has fixed Rs.2,40,000/= for loss of dependency. Therefore, the appellant is entitled to an additional amount of Rs.1,56,000/= on that count. It is submitted that she lost parental care, love and affection and in all other respects inadequate amounts are granted. But, considering the total amount granted, we are not enhancing the compensation granted under other heads. With regard to the mother, she was also employed as a high school teacher and same amount of compensation was fixed by the Tribunal. She was also aged 33 and for the very same reasons stated for the death of mother also we award an additional compensation of Rs.1,56,000/=. With regard to the death of brother who was only four years old, Tribunal already granted Rs.50,000/= as interim relief, but, only Rs.26,000/= was granted in the final award and claimant was asked to remit the balance. We are of the view that at least the minimum compensation fixed under Section 140 of the Motor Vehicles Act should be paid, and, therefore, Rs.50,000/= already

granted shall not be taken back from the claimant. We held that the appellant is entitled to Rs.50,000/=for the death of her brother. This is already granted. Hence, direction of recovering the excess amount is set aside. Appellant is entitled to Rs.1,56,000/= each in O.P.(M.V) Nos.456 and 460 of 1995 with interest. Thus, the appellant is entitled to an additional amount of Rs.3,12,000/=, over and above the decreed amount by the Tribunal, with 7% interest from the date of application till its deposit. Now, the appellant has become major and she is studying for nursing. Therefore, she is allowed to withdraw Rs.50,000/= each in O.P.(M.V)Nos.456 and 460 of 1995. The balance amount should be deposited in a Nationalised Bank for a period of five years and appellant is allowed to withdraw the monthly interest for her study and other expenses.

All the appeals are partly allowed.

J.B.KOSHY
JUDGE

K.HEMA
JUDGE

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